

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:
Docket to Determine the Compliance
of BellSouth Telecommunications, Inc.'s
Operations Support Systems with State
and Federal Regulations

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OFFICE OF THE
DOCKET No.: 01-00362
EXECUTIVE SECRETARY

**OPPOSITION TO BELL SOUTH'S MOTION FOR RECONSIDERATION OF HEARING
OFFICER'S ORDER REGARDING AT&T INTERROGATORY NO. 36
OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.,
TCG MIDSOUTH, INC., SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION,
AND MCI WORLD COM, INC.**

AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. (collectively "AT&T"), the Southeastern Competitive Carriers Association ("SECCA"), and MCI Worldcom, Inc. hereby submit its Opposition to BellSouth's Motion for Reconsideration of the Hearing Officer's Order Regarding AT&T Interrogatory No. 36. In addition, we request that Authority take appropriate actions to address BellSouth's failure to comply with the Authority's various orders relating to AT&T Interrogatory No. 36.

I. BELL SOUTH HAS PRESENTED NO CREDIBLE EVIDENCE THAT THE DEADLINE SET BY THE AUTHORITY WAS UNREASONABLE.

The Authority is well aware of the long and contentious procedural history surrounding AT&T Interrogatory No. 36, and we will not attempt to recount the entire history here. The Authority, however, succinctly summarized the crux of that history in the following three findings:

- "Throughout these proceedings, BellSouth has been evasive, at best, regarding the existence and availability of flow-through information on a state by state basis."
- "BellSouth's lack of candor and its record of non-cooperation in this docket have damaged its credibility."

- "Having considered the record in this case, the Pre-Hearing Officer concludes that BellSouth has inflated its estimate of the amount of time necessary to produce the information and BellSouth is capable of producing the required information by January 18, 2002."

Order on Procedural Matters (Docket No. 01-00362) dated December 31, 2001 (the "December 31st Order").

BellSouth now moves for the Authority to reconsider the portion of its *December 31st Order* setting the deadline for BellSouth to provide state-specific flow through data. The thrust of BellSouth's argument is that BellSouth presented evidence that it would take slightly more than 90 days to provide the requested data, and that the Authority had no evidence to conclude that 45 days was a reasonable time to provide that data. According to BellSouth, "the Hearing Officer's order is not based on the evidence in the record of this proceeding, is arbitrary, and should be reversed by the TRA." *BellSouth's Motion at 13.*

BellSouth's argument has no merit. While BellSouth may have submitted evidence to the Authority, as explained above, the Authority properly found that the evidence was not credible. *See December 31st Order at 9.* Absent any credible evidence, the Authority had no real choice but to rely on its own experience in setting a reasonable deadline.

Instead of presenting any new objective and factual evidence to show that a 45-day deadline was not reasonable, BellSouth continues to rely on the same self-serving and unsubstantiated opinion testimony that the Authority has already found not to be credible. BellSouth, moreover, states that it is working diligently to provide state-specific flow through data, but provides little detail regarding the actual work it has done. In fact, BellSouth's Motion for Reconsideration provides no details on its actual efforts to comply with the Authority's deadline. On January 18, 2002, BellSouth filed its *Response to the Hearing Officer's Order Entered December 31, 2001, in the Referenced Proceeding.* That response contained some

general information about the status of BellSouth's work, but that information is insufficient for the Authority to evaluate BellSouth's compliance with the Authority's order.

Credible evidence regarding the actual work that BellSouth has accomplished is critical to the Authority's ability to ascertain whether BellSouth has used its best efforts to comply with the Authority's order. At the very least, BellSouth should have provided the following types of evidence to demonstrate to the Authority that, despite BellSouth's best efforts, it has not been able to complete the task at hand:

- A revised project plan (if any) that reflected the manning levels suggested by the Authority.
- BellSouth's progress against the revised project plan, including the number of man-hours actually expended each week for each particular task.
- Evidence regarding the actual scope of work (e.g., number of lines of code that actually had to be rewritten, a description of BellSouth's technical approach, a description of any unanticipated efficiencies or inefficiencies, etc.)
- A projected completion date.

BellSouth did not produce this kind of new evidence, which obviously could have bolstered its case. Indeed, the general information that BellSouth provided regarding the status of its work suggests that BellSouth did not deviate from its original project plan. If BellSouth did not even attempt to complete the project in 45 days, then BellSouth has no credible basis for arguing that the Authority's deadline was unreasonable.

In sum, the original deadline set by the Authority was reasonable given the lack of credible evidence available to the Authority at that time. Thus, the Authority should deny BellSouth's Motion for Reconsideration. BellSouth, moreover, has not provided the Authority with the information necessary to determine whether BellSouth has used its best efforts to comply with the Authority's deadline. As explained below, an extension to the Authority's

deadline may be warranted if BellSouth has, in fact, used its best efforts to provide the required data within the Authority's deadline. On the other hand, if BellSouth did not even attempt to comply with the Authority's deadline, then sanctions against BellSouth would be appropriate.

II. THE AUTHORITY SHOULD ASCERTAIN THE EXTENT TO WHICH BELL SOUTH ATTEMPTED IN GOOD FAITH TO COMPLY WITH THE AUTHORITY'S ORDER AND TAKE APPROPRIATE PROCEDURAL ACTION BASED ON ITS FINDINGS.

At the regularly scheduled Authority Conference on November 6, 2001, the Pre-Hearing advised his fellow Directors and BellSouth that:

My aim is to allow, within reason, the CLECs to conduct cross-examination and otherwise put on a case that, in conjunction with BellSouth's case, provides the Authority with as much relevant or current information as necessary for the Authority to make the best-informed decision possible within the time frames I have recommended. *Therefore, at the close of discovery in this case, if it is shown my discovery orders have not been complied with, I will immediately issue an order striking the Georgia OSS test from the evidentiary record.*

Order Resolving Procedural Motions (Docket No. 01-00362) dated November 14, 2001, at 15 ("November 14th Order") (emphasis added).

As noted above, the Authority has already found that BellSouth previously has been evasive, uncooperative, and lacking in candor on this matter. December 31st Order, at 9. Accordingly, we request that the Authority require BellSouth to submit the information necessary for the Authority to ascertain the extent to which BellSouth attempted in good faith to comply with the Authority's deadline. If that information demonstrates that BellSouth has not used its best efforts to comply with the Authority's deadline, then the Authority should impose sanctions consistent with its admonition to the parties at the November 6th Authority Conference regarding non-compliance with discovery orders. Specifically, the Authority should either: (1) strike all of BellSouth's evidence regarding the regionality of its ordering OSS; or (2) prohibit

BellSouth from contesting the reasonableness of AT&T's Hearing Exhibit No. 8 as a surrogate for state-specific flow through rates for the purposes of determining whether BellSouth's ordering OSS are regional.

On the other hand, if BellSouth can demonstrate that, despite its best efforts, it could not meet the Authority's deadline, then an extension to that deadline may be appropriate. Extending the deadline for BellSouth's response, however, would necessitate a comparable extension to the January 25, 2002, deadline for filing briefs. The Authority had set the discovery deadline before the deadline for briefs so that the parties could utilize state-specific flow through rates in their briefs¹. Without state-specific flow through rates, the CLECs will be forced to rely exclusively on a flow through rate surrogate -- AT&T Hearing Exhibit No. 8 -- to support its allegations that state-to-state variances in flow through rates demonstrate that BellSouth's ordering OSS are not regional. At the hearing, BellSouth challenged the appropriateness of that surrogate. Basic principles of fairness dictate that BellSouth either provide CLECs with state-specific flow through rates for use in their Phase I briefs, or be precluded from asserting that its ordering OSS are regional.

CONCLUSION

We respectfully request that the Authority deny BellSouth's Motion for Reconsideration because the original deadline set by the Authority was reasonable given the lack of credible evidence available to the Authority at that time.

¹ The FCC has found that flow through rates are a useful tool in evaluating OSS performance. See *FCC Mass. Order ¶ 77*. The FCC, moreover, has evaluated state-specific flow through rates in section 271 proceedings involving non-BellSouth states, such as Massachusetts, Kansas, and Oklahoma, to name a few. *FCC Mass. Order ¶ 79*; *FCC Kansas/Oklahoma Order ¶¶ 145-46*.

We also respectfully request that the Authority require BellSouth to submit the information necessary for the Authority to ascertain the extent to which BellSouth used its best efforts to comply with the Authority's deadline. The Authority's finding on that issue is critical to determining whether the Authority should impose sanctions on BellSouth for failing to comply with the Authority's discovery orders, or grant BellSouth an extension within which to provide its response to AT&T Interrogatory No. 36. In either case, the Authority should suspend the filing Phase I briefs until this issue has been resolved, at which time the Authority would set an appropriate deadline for filing of briefs consistent with the resolution of this matter.

Respectfully submitted,

By: 

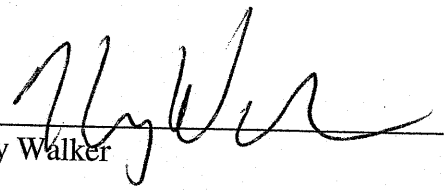
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 22 day of January, 2002.

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